

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF ROOSEVELT PARK,

Plaintiff-Appellee,

v

POLICE OFFICERS LABOR COUNCIL,

Defendant-Appellant.

UNPUBLISHED

May 12, 2011

No. 295588

Muskegon Circuit Court

LC No. 09-046817-CL

Before: SAWYER, P.J., and WHITBECK and WILDER, JJ.

PER CURIAM.

Defendant appeals from an order of the circuit court setting aside an arbitration award granted in favor of defendant. We reverse and remand.

Plaintiff and defendant are parties to a collective bargaining agreement covering the city's police patrol officers. In February 2009, defendant filed grievances regarding the allocation of overtime between full-time and part-time officers. The grievances were denied at the step one (the Chief of Police) and step two (the City Manager) levels of the grievance process. The grievances were then combined, and defendant requested to submit the matter to arbitration (step four), skipping over step three (City Council review). Although this was initially agreeable to plaintiff, plaintiff later took the position that the grievances were not arbitrable. The parties agreed to let the arbitrator determine the arbitrability of the grievances.

The arbitrator found that the grievances were, in fact, arbitrable and that the overtime grievances could proceed to arbitration, skipping over step three of the grievance process. Plaintiff filed the instant action to set aside the arbitrator's decision. The circuit court agreed with plaintiff and set aside the arbitrator's decision.

We review the trial court's decision to enforce, vacate, or modify an arbitration award de novo. *Saveski v Tiseo Architects, Inc.*, 261 Mich App 553, 554; 682 NW2d 542 (2004). And whether an arbitrator exceeded his or her powers is also reviewed de novo. *Miller v Miller*, 474 Mich 27, 30; 707 NW2d 341 (2005).

The collective bargaining agreement describes "Step 3" of the grievance process as follows:

In the event that the grievance is not adjusted to the satisfaction of the employees and involves a discharge or suspension in excess of 30 days, the

grievance shall be submitted in writing by the employee and/or his designated representative within the next seven (7) working days to the City Council of the City of Roosevelt Park. Review by the City Council is contingent upon the employee requesting and not rescinding the request, that the City Council review be held in closed session. The City Council shall submit a recommendation to the Union President and City Administration.

Clearly, the overtime grievances are not subject to review by the City Council because they do not involve the discharge or suspension for more than 30 days of an employee. Defendant takes the position that that means the grievance merely proceeds from Step 2 to Step 4. Plaintiff takes the position that because Step 3 cannot take place, Step 4 can never be reached and, therefore, the grievance terminates at Step 2. The arbitrator agreed with defendant.

Ultimately, it does not matter whether we (or, for that matter, the trial court) agrees with the arbitrator's interpretation of the contract. As the United States Supreme Court pointed out in *United Steelworkers of America v Enterprise Wheel & Car Corp*, 363 US 593, 599; 80 S Ct 1358; 4 L Ed 2d 1424 (1960), "so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different than his." This Court follows this principle as well. See, e.g., *Michigan Ass'n of Police v City of Pontiac*, 177 Mich App 752, 760; 442 NW2d 773 (1989), which quoted the following passage from *United Paperworkers Int'l Union, AFL-CIO v Misco*, 484 US 29, 38; 108 S Ct 364; 98 L Ed 2d 286 (1987): "But as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision." The trial court's error lies in failing to heed this principle.

The arbitrator found that the language of the Agreement was ambiguous because, while Step 3 only applied to certain grievances, it was not clear that Step 3 acted as a gate-keeping measure to limit those grievances that were arbitrable. Step 3 limits the right of appeal to the City Council to those grievances involving a discharge or suspension of more than 30 days. But there is no language specifically stating that all other grievances are limited to being addressed in only the first two steps of the grievance procedure. While plaintiff maintained that the language of Step 3 precluded all other grievances from being arbitrated, the arbitrator found that the absence of language precluding all other grievances from being arbitrated created an ambiguity in the Agreement. Because of the ambiguity, the arbitrator allowed in parol evidence from past negotiations between the parties. The un rebutted parol evidence showed that plaintiff had suggested eliminating Step 3 completely from the grievance procedure without any significant changes to Step 4. This would mean that all grievances would go automatically from Step 2 to Step 4 and be eligible for arbitration. Defendant opposed the elimination of Step 3 because of the protections it provided for those grievances involving a discharge or prolonged suspension. The arbitrator concluded that Step 3 was not meant to limit the types of grievances that were arbitrable, but rather to allow additional protection for grievances involving discharge or prolonged suspension.

In reviewing the arbitration decision, the circuit court merely disagreed with the arbitrator's interpretation of the agreement. The circuit court concluded that the agreement was not ambiguous and agreed with plaintiff's interpretation of the agreement. But a trial court must give deference to the arbitrator's interpretation of a contract, even where the trial court disagrees

with the arbitrator's interpretation. In failing to do so, the trial court failed to give the appropriate deference.

The decision of the circuit court is reversed and the matter is remanded with instructions to reinstate the arbitrator's decision. We do not retain jurisdiction. Defendant may tax costs.

/s/ David H. Sawyer

/s/ William C. Whitbeck

/s/ Kurtis T. Wilder